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Human Rights and Broken Cisterns: Counterpublic Christianity and Rights-based Discourse in Contemporary England

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ABSTRACT

Although human rights are often framed as the result of centuries of Western Christian thought, many English evangelicals are wary of the U.K.'s recent embrace of rights-based law. Yet this wariness does not preclude their use of human rights instruments in the courts. Drawing upon fieldwork with Christian lobbyists and lawyers in London, I argue that evangelical activists instrumentalise rights-based law so as to undermine the universalist claims on which they rest. By constructing themselves as a marginalised counterpublic whose rights are frequently 'trumped' by the competing claims of others, they hope to convince their fellow Britons that a society built upon the logic of equal rights cannot hope to deliver the human flourishing it promises. Given the salience of contemporary political conservatism, I call for further ethnographic research into counterpublic movements, and offer my interlocutors' instrumentalisation of human rights as a critique of the inconsistencies of secular law.

KEYWORDS Human rights; counterpublics; Christianity; law; abortion

Introduction: Polonius' Poor Advice

Conway Hall, the headquarters of the U.K.'s oldest established freethought organisation, might seem an unusual institution to host a speaker from Christian Concern, a London-based lobby group with a 'passion to see the United Kingdom return to the Christian faith'.¹ Nevertheless, it was to this bastion of secular humanism that I accompanied Carrie, the Christian Concern events manager, one evening in September 2012. We had come to watch a debate in which Andrea Minichiello Williams, the group's founder and CEO, would discuss 'Freedom of speech, anti-abortion protestors and women: rights and limits'. The debate had been organised by the British Pregnancy Advisory Service (BPAS), Britain's largest abortion provider. It had proved

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exceptionally timely: while Andrea went over her notes, lawyers from the Christian Legal Centre – Christian Concern’s sister organisation, which exists to ‘defend ... individuals and churches who have suffered discrimination and challenges because of their desire to live and work according to biblical beliefs’ – were polishing their arguments for the following morning, when they would represent two such anti-abortion protestors in criminal court. Andy Stephenson and Kathryn Sloane, members of pro-life group Abort67, had been arrested under the Public Order Act for displaying graphic images of aborted fetuses outside one of BPAS’ Brighton clinics. Their upcoming trial threw into sharp relief the issues to be discussed, reminding the 300 person audience that although this particular debate was academic, the growth of groups like Abort67 meant it was being played out up and down the country with increasing frequency.

Having arrived with plenty of time to spare, Carrie and I took a quick tour of the venue. Conway Hall’s main auditorium resembles a cross between a small theatre and an old-fashioned school assembly hall. Above the stage, topping its wooden framing, is Polonius’ oft-quoted dictum: TO THINE OWN SELF BE TRUE. Carrie wondered aloud about the quote. Having determined that it did not come from the Bible, she announced it to be ‘a very humanist statement’. The problem with this, she explained, was that it begged the question: ‘who *are* you?’ Extending her index fingers and curling her middle, ring, and little fingers into her palms, she pointed two finger guns at me. ‘A mass murderer can say they’re being true to themselves, and then: *bang bang!*’

Carrie’s rejection of Polonius’ maxim indexes real concerns about the contested nature of goodness, morality, and capital-T Truth. These concerns form the subject of this article, which focuses on English evangelical activists’ responses to what they see as the U.K.’s embrace of a ‘culture’ of rights (Cowan *et al.* 2002: 11). While human rights are often theorised as rooted in a particularly ‘Western Christian’ understanding of the person (Little 2015: 2; cf. Asad 2000, 2003; Wolterstorff 2008; Sherwood 2012; Moyn 2015), this narrative is complicated by the frequent *rejection* of rights-based logic among conservative Christians, who understand rights-based claims to rely on an atomistic logic that elevates the fallen morality of created men and women over the limitless wisdom of their Creator God. As such, the rise of rights language is thought to pander to the worst excesses of those who would take Polonius at his word: it encourages depraved humans to be ‘true’ to their fallen selves, permitting rather than restricting sinful behaviour.

Despite these concerns, the Christian Legal Centre – which has litigated such high-profile European Court of Human Rights cases as those of Gary McFarlane,² a Christian counsellor who was dismissed from his job after voicing concerns over his ability to offer psychosexual therapy to same-sex couples, and Shirley Chaplin,³ a nurse who was removed from clinical duties after refusing to take off a crucifix necklace deemed to breach her uniform requirements – often couches its arguments in the language of rights. In particular, they rely on Articles 9 and 10 of the European Convention (as articulated in the U.K.’s Human Rights Act 1998), which protect the rights to freedom of thought, conscience, religion, and expression.⁴ This is, in part, the result of the British legal system’s ongoing transition from recognising negative civil liberties

to enforcing positive human rights, thereby encouraging would-be litigators to frame their claims in these terms (Hill *et al.* 2011; Sandberg 2011). As it was once put it to me, ‘You can only operate with the laws that you’ve currently got.’ But the Christian Legal Centre uses rights-based legislation even when alternative, and perhaps less risky,⁵ legal strategies are available to them.⁶ This suggests that they pursue rights-based claims for reasons that go beyond the necessity of operating within ‘the laws that you’ve currently got’.

Drawing on 22 months of fieldwork split between Christian Concern/the Christian Legal Centre⁷ and a conservative evangelical church in London,⁸ this article takes the Centre’s human rights claims and rights-based discourse as its objects of ethnographic enquiry. It argues that Christian activists continue to litigate their cases under human rights law precisely because they want to point out the flaws they imagine a rights-based system to embody. Despite viewing the human rights project’s high valuation of the human as a secularised version of Christian thinking, my interlocutors find its current expression in English law both undesirable and unworkable. Unlike Christianity, which is thought to pursue the good of all, human rights are accused of prioritising the individual’s desires over the building up of common values. In this way, English evangelical activists echo the assessment of postliberal theologian Stanley Hauerwas (1987: 238), who argued some years ago that ‘[c]ontemporary political theory has tended to concentrate on the language of rights, not because we have a vision of the good community, but because we do not’ (cf. MacIntyre 1981: 246; Brown 2004).

Thus, while advocates of inherent rights posit them as existing regardless of context – suggesting that ‘a human rights violation anywhere is of the same epistemological order and of the same moral, political, or legal significance as a human rights violation elsewhere’ (Riles 2006: 54) – my interlocutors argue that the legal system’s embrace of rights discourse has resulted in conservative Christians having their allegedly inviolable rights ‘trumped’ by the competing claims of others (cf. Stychin 2009; Clucas 2012; Bomhoff 2013). Focusing on two of the Centre’s cases, *Johns v Derby City Council* and *R v Stephenson & Sloane*, this paper suggests that the Centre instrumentalises the language of rights to establish conservative Christians as the members of a self-identified ‘counter-public’, highlighting their subordinate status and marking themselves off from an allegedly dominant political elite (Warner 2002: 119). This counterpublic discourse seeks to awaken its hearers to the logical inconsistencies of a doctrine that posits people as the bearers of universal rights while simultaneously restricting the freedoms of those who disagree with what the Centre terms the ‘prevailing politically correct orthodoxy’ (Williams 2011).

Given the rise of comparative conservative counterpublics throughout Europe and America (Hochschild 2016; Westermeyer 2016; Pedersen 2017), I contend that anthropologists must critically engage with the principles and pragmatics behind those who continue to be dismissed as anthropology’s ‘repugnant cultural others’ (Harding 1991). It is only by taking seriously the ontological assumptions and meaning-making strategies of conservative counterpublics that we can begin to understand the appeal of these movements (Westermeyer 2016: 134). Contra those theorists who frame the language of rights as a near inevitable tool of state violence (Asad 2003; cf.

Sullivan 2005; Hurd 2015), I argue that the Christian Legal Centre provides evidence of how rights language can be harnessed to challenge the state to confront its own inconsistencies (cf. Casanova 1994, 2006; Weizman 2016; Wenger 2017). A critique that relies on the tools of the object under criticism, however, will always have complicated outcomes. Drawing upon ethnographic evidence from feminist and queer counterpublics, I reflect upon the uncertain impact of such a critique, and conclude that, from some angles, it never quite manages to achieve exteriority to the legal framework it hopes to undermine.

On Human Rights

Since the United Nations' 1948 adoption of the Universal Declaration of Human Rights (UDHR), rights-based discourse has acquired prominence as an 'ethical lingua franca' (Tasioulas 2007: 75), even approaching the title of 'sole approved discourse of resistance' for marginalised groups (Rajagopal, quoted in Riles 2006: 56). Yet despite the UDHR's confident assertion that human rights are the 'highest aspiration' of the people of the world, there is little philosophical or practical consensus as to the ultimate foundations of international human rights law (MacIntyre 1981; Rorty 1982; Brown 2004; Freeman 2004: 376). One oft-voiced explanation for the historic emergence of the belief that men (and, occasionally, women) are endowed with certain rights by virtue of their humanity frames it as the fruit of centuries of 'Western philosophical and theological thought', with an emphasis on Christian theology as a precursor to theories of natural rights (Little 2015: 8). In the words of theologian Nicholas Wolterstorff (1987: 221), modern notions of rights derive from the Bible's '[d]eep and pervasive ... insistence that human beings occupy a special place among earthlings in God's eye', as well as their resulting moral obligations to others made in God's image (Pojman 1991; Freeman 2004; Wolterstorff 2008; Little 2015; cf. Sharma 2006; Sherwood 2012).

While Wolterstorff (2008) is an advocate of what he calls 'inherent rights', his theologically inclined understanding of their origin is not limited to those who embrace the human rights project. Talal Asad's (2000) critical take on liberal accounts of rights argues that these ostensibly universal values have 'specifically Christian roots', emerging, as they do, out of Latin Christendom's understanding of natural law. If Asad and Wolterstorff link Christian theology to the emergence of inherent rights as thinkable ideals, recent historical scholarship has shown a more pragmatic side to this relationship. In their challenges to the 'foundation myth' of the post-war rights revolution, in which 'the proximate origins' of the Universal Declaration and European Convention are to be found in collective disgust at the atrocities of the Holocaust (Duranti 2012: 159), Samuel Moyn (2010, 2015) and Marco Duranti (2012, 2017) suggest that the codification of rights in law owes more to conservative Christian (and particularly Catholic) anxieties surrounding secularism, socialism, and individualism than to an international recognition of the horrors of genocide.⁹ Thomist philosopher Jacques Maritain, for example, played a significant role in promoting universal rights as a bulwark against atheistic Marxism (Moyn 2015: Chapter Two), while French Catholics determined to ensure parental control over religious education advocated for the

codification of human rights on this basis (Duranti 2017: Chapter Seven). These post-war conservatives believed that a supranational European court was more likely to promote 'Christian values' than secular national governments, with human rights the vehicle through which they might 'reconstitute a Christian Europe' (Duranti 2017: 301).

These Christianising aspirations, however, did not come to pass. As Udi Greenberg (2017: 184) notes, neither the European Convention nor its attendant court was able to transform the legal order. Cognisant of its 'flimsy legitimacy', the European Court of Human Rights often deferred to those it was supposed to police: 'Everybody recognised that "Europe" could not overturn the decisions of national parliaments, and the court regularly parroted the words of nation states' (Greenberg 2017; cf. Duranti 2017: 317).

The uneasy relationship between state power and international law is also highlighted by Asad. His genealogy posits that rights rely on a particular construction of 'the human' as sovereign and independent, possessing rights 'independently of social and political institutions' (Asad 2003: 130). This interpretation suggests a duality in which an individual can suffer both as a 'national of a particular state' and as a 'human being' (Asad 2003: 129). Paradoxically, human rights are concerned only with the suffering of the abstract human being, yet rights-based law is meaningless unless enforced by state actors on behalf of citizens. Invoking Hannah Arendt's assertion that human rights depend on national rights – when faced with stateless, persecuted, victimised bodies, Arendt wrote, the world 'found nothing sacred in the abstract nakedness of being human' (quoted Asad 2003: 143) – Asad argues that '*sacredness* in the modern secular state is attributed not to real living persons but precisely to "the human" conceptualised abstractly, or imagined in a state of nature'. As such, Asad wonders what kind of 'justice' human rights can achieve.

It is precisely this relationship between state-backed norms and human rights law that my activist interlocutors find frustrating. They reject the association of justice with the rule of law when that law, in their eyes, permits sinful behaviour in the name of rights. Yet they also complicate the narrative that sees rights discourse as Christianity's secular successor. By contrast to this genealogy, my interlocutors stress an assumed distance between Christian Britain's tradition of 'tolerance' and the contemporary application of human rights law. Although they willingly ascribed Christian origins to both negative civil liberties and (certain understandings of) positive rights, these were usually distinguished from Britain's post-Human Rights Act 'agenda'. Andrea, for example, believes that civil liberties such as freedom of speech, worship, and association are Christian in origin, and she associates the alleged dismantling of Britain's Christian framework with the corresponding erosion of these liberties. She understands the European Convention to have been 'infused' with Christian values. However, she also worries that the 'Christian backdrop', in her words, that lies behind human rights' 'recognition of human dignity' has been 'hijacked by an equality and diversity type approach'.

From Andrea's perspective, this hijacking has undermined the law's structural unity, as the secularisation of contemporary rights discourse means that English courts do not recognise the Bible as a higher power to which to appeal when applying the law (Freeman 2004: 386–391; see McCrea 2010: 53–56, for an overview of EU Treaty

drafters' debates on whether or not to incorporate a reference to the Christian God into the Treaty; and Morsink 1999: 281–290, for a similar account in relation to the UDHR). Without access to God, a 'God-substitute' such as Reason or Nature (Freeman 1994: 498; Morsink 1999: 282), or a guiding principle to which to appeal in the case of conflicting rights, the pitting of one discrete right against another has led some conservative Christians to associate human rights with an 'anti-moral agenda' (Carey 2011).

During a presentation at a conference called 'Setting Love in Order: Protecting the freedoms to believe, to exist and to change when homosexual feelings are unwanted', Andrea spoke of the 'confusion of rights language' that had resulted from this failure to define and pursue the U.K.'s common good. The conference had been organised by the Core Issues Trust, an 'ex-gay'¹⁰ charity. Andrea was one of a number of speakers invited to address the sixty or so delegates, a mix of conservative Christian activists, therapists, liberal Christians opposed to ex-gay therapy, journalists and one Labour politician. Her presentation focused on the potential consequences of the Counsellors and Psychotherapists (Regulation) Bill, a Private Members' Bill put forward by Labour's Geraint Davies, which sought to regulate the provision of psychotherapy (and was generally understood as an attack on ex-gay ministries). Standing in the Emmanuel Centre¹¹ in a candyfloss pink suit and matching lipstick, Andrea combined the passionate oratory of an evangelical preacher with the aesthetics of Jackie O. Arguing that Britain's constitutional freedoms, which she dated to the 1215 Magna Carta, were undone by laws such as that put forward by Mr Davies, she continued:

Note that the Magna Carta is not really framed in the language of 'rights' ... [A]nd human rights, of course, are actually very confusing, because actually what we need as a society, and what the Magna Carta set down in constitutional terms, was an idea of the common good, of what is good, [which was] founded deeply in the precepts and the principles that are rooted in the Bible, in Christianity.

The embrace of rights, she explained, had led to a situation where 'there are competing rights and no idea of what the common good is', with Bible-believing Christians punished as a result.

Why, then, does the Christian Legal Centre continue to mount challenges framed in the language of rights? Their complicated relationship with rights was summed up by Andrew Marsh, the group's campaign manager, at a presentation he gave at a Baptist church in September 2012. His talk, titled 'The Marginalisation of Christianity in Britain Today', focused on Britain's recent departure, as he saw it, from Christian values. After his presentation, the floor was opened up to questions or comments. Most of those present appeared to be over the age of 60,¹² and one of the first comments came from a retired social worker. He told us that in the council where he had previously worked, a room had been made available for a Muslim colleague to pray in, but no such concessions had been made for Christians. Andrew responded by suggesting that this differential treatment was not uncommon. However, he then stated that the decision to seek to enforce one's rights in such a situation was 'complex'. This was because Christians:

Don't want to be quick to assert our rights, because ... it doesn't tend to lead to a cohesive society. But I think in some of these cases we need to recognise that and to highlight it, because it shows really that the current approach isn't working. It's not even working on its own terms, where it preaches fairness but actually doesn't seem to reflect that in practice.

This answer draws attention to the instrumental potential of human rights law, not primarily in terms of its ability to right a wrong or wring justice from inequity – to insist upon the equal treatment of Christian and Muslim employees, for example – but to flag up injustice as evidence of the conceptual bankruptcy of a framework that 'preaches fairness but actually doesn't seem to reflect that in practice'.

Andrew encouraged this small, aging pocket of the Kingdom to go against their Christian disinclination to 'cry discrimination' by highlighting the benefit of using rights-based language to reveal its own inconsistencies. Like Asad, he recognised that human rights law can be deployed as part of the state's attempt at civilising minority groups, those who reject the norms of their (often colonial) state authorities. But by contrast to Asad's (2003: 158) account, which reifies rights as instruments of only 'the most powerful nation-states', Andrew suggested that rights discourse could be used to reveal and challenge the fickle nature of those same state-backed socio-legal norms. In the following section, we will examine two of the Centre's cases as concrete examples of this approach.

Rights and Rhetoric

Conway Hall fell silent as Andrea took to the lectern. Her presentation followed that of Ann Furedi, BPAS' chief executive, who had argued that although she found no words to be 'unsayable' and no images 'unshowable', the right to freedom of speech was 'not some kind of charter that allows you to say anything you want, at any time you want, in any place you want'. After thanking the debate organisers for her invitation to speak, Andrea said:

I was ... heartened when Ann Furedi said that nothing should be unsayable and no image unshowable, because in a sense I wanted to go to the very heart of what has caused this debate this evening ... So, what are the abortion images that Abort67, that Kathryn Sloane and Andy Stephenson, are showing? Let's look at them now, shall we?

Andrea pressed *play*. Vague murmurings of disapproval – at Andrea from the pro-choice side, at the act of abortion from the pro-life side – swept the room as a screen mounted on the stage began to play a video of a surgical abortion to the 300 person audience. The video clip, which lasted about a minute and a half, was bloody and graphic. Footsteps at the back of the hall indicated someone leaving the room for its duration. When the clip had finished, Andrea used the screen to show some of the still images used by Andy and Kathryn in their anti-abortion protests, one of which showed dismembered foetal remains, including a foot. Indicating the images, she continued: 'Ann Furedi talks of the right of autonomy for the woman, of the right of choice. But what about the right of that seven week embryo? The right of that little foot?'

Andrea's decision to spend a portion of her allocated speaking time standing in silence while the audience watched the removal of a dismembered foetus from an anonymous woman's vagina proves a useful starting point for an exploration of the use of rights-based language to undermine a rights-based framework. Of the four speakers (two of whom were pro-choice and two of whom were pro-life), Andrea's was the only presentation later accused of deviating from the topic at hand; whatever her intentions, her video was taken as an attempt to condemn abortion itself rather than a discussion of the 'rights and limits' of pro-life protestors (see the report by *Guardian* journalist Sarah Dittum 2012). From Andrea's perspective, however, she had shown the video in an attempt to 'bring integrity' to a debate that, by focusing on the rights of (born) women and ignoring those of (unborn) children, she felt to be 'intellectually dishonest' (quoted in Dittum 2012).¹³

Similar accusations are implicit in many of the Centre's legal arguments. Take, for example, the case of *Johns v Derby City Council*, which came before the High Court in November 2010.¹⁴ In 2007, Eunice and Owen Johns, Jamaican-born Derby residents and members of the Church of the God of Prophecy, applied to Derbyshire Council for approval as short-term foster carers, a position they had previously held without complaint. In the intervening years, however, the regulations governing fostering had changed. In accordance with the Council's fostering guidelines, the application process for prospective foster carers now required them to comment on their ability to support a child who was unsure of her sexuality or identified as lesbian, gay, or bisexual. According to the social worker who interviewed them, 'both Eunice and Owen expressed strong views on homosexuality, stating that it is "against God's laws and morals"', and when asked how he would support a child who was lesbian or gay, Mr Johns told the interviewer that he would 'gently turn them round'.¹⁵

This left the Council staff in a bind. On the one hand, they felt unable to approve foster carers whose views on homosexuality seemed to breach the requirements of the National Minimum Standards for Fostering Services. On the other, they were equally bound by the Equality Act 2006, which prohibits discrimination on religious grounds. The application stalled, and the Johns, represented by the Christian Legal Centre, instituted judicial review proceedings against the Council. As no decision had actually been made on the Johns' suitability as foster parents, both parties agreed to make a joint application for declaratory relief, asking the High Court to provide an answer to the following question:

How is the Local Authority as a Fostering Agency required to balance the obligations owed under the Equality Act 2006 (not to directly or indirectly discriminate on the grounds of religion or belief) [with] the obligations under the Equality Act (Sexual Orientation) Regulations 2007 (not to discriminate directly or indirectly based on sexual orientation) [...]?¹⁶

The question's reference to '[balancing obligations]' reflected the by then well-established trope that the duty not to discriminate on grounds of religion and the duty not to discriminate on grounds of sexual orientation were diametrically opposed. The impact of the Equality Act (Sexual Orientation) Regulations 2007 on adoption and fostering agencies with a religious ethos had taken on an almost iconic status as an example

of the tension produced by a system that sought to reconcile both the right to freedom of religion and the right to non-discrimination, an issue deemed especially inflammatory in relation to child welfare (Stychin 2009: 19). For many conservative commentators, particularly (but not exclusively) those who identified as Christian, the requirement that homosexual and heterosexual couples be treated as legally equivalent by religious adoption agencies and foster parents was understood as an example of religious rights being 'trumped' (Donald *et al.* 2012: 82–83), with the duty to 'balance' competing rights seen as proof that the relationship between sexual orientation, religion, and the law was actually in a state of *imbalance* (Stychin 2009: 34).

Indeed, the apparently irreconcilable conflict between these two competing rights was stressed in the Centre's submissions to the High Court. Paul Diamond, Standing Counsel to the Christian Legal Centre, asserted that '[t]he advancement of same-sex rights is beginning to be seen as a threat to religious liberty'.¹⁷ He argued that to prioritise the right to non-discrimination over the right to freedom of religion was to issue 'a blanket denial on all prospective Christian foster parents in the United Kingdom'.¹⁸ Drawing on the language of sexual minorities, Mr Diamond submitted that refusing to recognise the validity of the Johns' position would force Christians 'into the closet'.¹⁹ He was concerned not only to point out the conflict of rights that had been codified by the various statutory instruments identifying both religion and sexual orientation as protected characteristics, but to use this to paint Christians as a marginalised group at risk of 'second class' citizen status.

The judges who heard the case, Lord Justice Munby and Mr Justice Bateson, were unimpressed with what they later described as Mr Diamond's 'extravagant rhetoric'.²⁰ Critiquing his submissions as a 'travesty of the reality',²¹ and claiming that parts of his argument were simply 'utterly unarguable',²² they dismissed the question put before them as too vague to answer. Their strongly worded judgment was interpreted as a stinging rebuke to the parties involved, and, in particular, to Mr Diamond himself. Nor were Justices Munby and Bateson alone in their opinion of the case. Legal commentator Joshua Rozenberg (2011), for example, declared to readers of *The Guardian* that Diamond's performance proved the paradox that 'it is never a good idea for an advocate to be committed to his or her cause', and suggested that Christian campaign groups 'should avoid using tendentious arguments in support of claims which are unwinnable'. Even fellow Christians wondered what the Centre had hoped to achieve. Despite sharing the Johns' understanding of sexual ethics, a number of conservative evangelical lawyers told me that taking the case had been strategically unwise, while the cross-party group Christians in Parliament (2012: 45) criticised the Centre's reporting of the judgment as misleading: 'The assumption of a martyr position can appear laudable, but is often a lazy mode of public engagement.' More unforgiving still were liberal Christians, such as Anglican Bishop Alan Wilson (2011), who argued that 'the customary paranoia of rightwing newspaper op-eds sounds silly in court'.²³

Yet in spite of these less than positive responses from the legal and religious establishment, there is a sense in which *Johns* ought to be seen as a Christian Legal Centre success. Although the judges declined to rule on the Council's non-decision and refused to give leave to pursue judicial review, they did state that:

While as between the protected rights concerning religion and sexual orientation there is no hierarchy of rights, there may, as this case shows, be a tension between equality provisions concerning religious discrimination and those concerning sexual orientation. Where this is so, Standard 7 of the National Minimum Standards for Fostering and the Statutory Guidance indicate that it must be taken into account and in this limited sense the equality provisions concerning sexual orientation should take precedence.

For those who had fought the case, this statement proved what they had been saying all along: that in a rights-based society which protects conflicting rights, some rights would take precedence over others. The Centre soon set about exposing what they regarded as the intellectual dishonesty of a judgment which could deny the existence of a 'hierarchy of rights' while simultaneously indicating that, in some cases at least, provisions relating to sexuality 'should take precedence'. In an opinion piece titled 'Permanent Exclusion and the Johns' (Williams 2011), Andrea wrote:

I hope that the highlighting of the issue in the press will shatter the misconception that the Equality Act means equality for all. Some are very much more equal than others. We are currently living in 'Animal Farm' days; 'All animals are equal, *but some animals are more equal than others*'.

By pitting two protected rights against each other, the Centre had, one might argue, called the human rights project's bluff. Although no order had actually been made by the court, they could present the judgment as evidence that the context-negation of human rights advocates, in which all rights are innately held and of equal worth, was mere – and perhaps even *extravagant* – rhetoric. Some rights would always prove more violable than others. The only question was which value system would be used to decide between them. As the article stated, 'Judges and politicians want to restrict participation in public life to those who subscribe to their values, yet their values appear to be little more than whatever the prevailing politically correct orthodoxy is; fleeting, malleable and unsustainable' (Williams 2011). *Johns*, then, was not a case lost, but an argument vindicated.

Counterpublic Critique

In the Centre's court submissions and Andrea's article, conservative Christians are both objectively presented as being and subjectively encouraged to identify as a maligned, marginalised group. These references to perceived oppression '[provide] the impetus for the development of a self-consciously oppositional identity' in relation to what is taken to be an otherwise marginalising public sphere (Felski 1989: 167), thereby indicating one's membership in a particular kind of public. Literary critic Michael Warner (2002: 67) defines a 'public' as a social form brought into being through circulating discourse, a conglomeration of strangers that exists 'by virtue of being addressed'.²⁴ The ideology of the bourgeois public sphere requires this address to be grounded in 'rational-critical' discourse, the disembodied reason of anonymous written texts and their unknown audience of readers. In this imagining, '[t]he public is thought ... to require persuasion rather than poesis' (Warner 2002: 115). Some publics, however, are defined through their opposition to the ideological dominance

of discourse that presents itself as representing *the* public. These *counterpublics* are constituted not only through rational-critical dialogue, but through alternative forms of address and engagement, such as the passionate and emotionally stimulating Quranic language of Egyptian reformist preachers (Hirschkind 2006: 122) or the critique of heteronormativity offered by the comportment of lesbians and gay men (Warner 2002: 51–52). It is such a counterpublic that the legal arguments and opinion pieces cited above invoke, constituting, as they do, a form of discourse in which conservative Christians are understood to be defined by their marginal relationship to the dominant public sphere.

Indeed, in Diamond's analysis, Christians are more than simply marginal. They are victims of an intolerant and ethically bankrupt state which seeks to 'use its coercive powers to de-legitimise Christian belief'.²⁵ In his portrayal, Christians are excluded from civil life on the grounds that they lack 'the same degree of moral accountability as other members of society' (Honneth 1992: 191): they are 'second class' citizens, unfit to foster vulnerable children. As we have already seen, these assertions were dismissed by the High Court as unable to satisfy the evidentiary requirements of the law. But by rejecting the norms of dominant public discourse, opting instead to express themselves in forms alien to the preferred rational-critical language of the public sphere in general and the legal system in particular – submitting, instead, claims couched in 'extravagant rhetoric', emotionally arresting videos and images, and legally inadmissible assertions such as 'I believe' (Rozenberg 2011) – the textual and photographic record of the Centre's cases and public pronouncements form a narrative that simultaneously draws upon and brings into being their counterpublic status. That this discourse is excluded from the court sheds light on the ideology of a legal system that defines religious 'passion' as 'inimical to reason', thereby subjecting it to restraint by secular authorities (Asad 2003: 67). Cases like *Johns* reveal that in law, as in religion, 'the demand for evidence can be the prerogative of power' (Keane 2008: 116), with certain kinds of proofs and truth claims – and particularly those couched in the words 'I believe' – quite literally ruled out of court (Sullivan 2005).

As Emma Tarlo's (2010: 127) discussion of the use of human rights law by the Islamist organisation Hizb ut-Tahrir shows, conservative Christians are not unique in using the law towards ends with which its drafters might disagree. Nor are they alone in seeking to use the weight of the law against itself. Elian Weizman (2016), for example, has recently argued that Palestinian legal activists use Israel's Basic Law to unmask the oppressive nature of the Israeli state.²⁶ These cause lawyers use the court system to show that although the constitution guarantees the equality of all citizens, justice is always framed 'ethnically', with Palestinian citizens of Israel routinely denied their rights (Weizman 2016: 47). It is worth noting, however, that although these actors seek to use extant law to reveal its own inconsistencies, they are careful to do so within the limits of legal convention: they 'follow strictly legal argumentation ... [Accepting that the] legal field has established conventions that must be adhered to by those who choose to enter it' (Weizman 2016: 49). While Weizman's interlocutors use the courts to frame Palestinians as full (albeit unrecognised) citizens who ought to be included in the state's distribution of rights and privileges, my interlocutors use

the courts to conceptually *exclude* themselves from the dominant public, instead embracing a counterpublic identity.

To be sure, to be a member of a conservative Christian counterpublic in twenty-first century Britain is to adopt a subaltern identification by choice, at least in part.²⁷ Yet the Centre's counterpublic discourse is more than just 'the expression of subaltern culture' (Warner 2002: 121). This is because, as with any public discourse, counterpublic speech requires the speaker to open their words up to 'indefinite others' (Warner 2002; cf. Felski 1989: 168; Fraser 1995: 293). It is precisely by speaking into this space of unknown discursive circulation that Christian activists hope to convince wider society of the validity of their understanding of the good, even as they simultaneously construct themselves as a marginalised group that exists in opposition to this wider society.

Can we conclude, then, that the Centre makes what Rozenberg calls 'tendentious arguments' while pursuing 'unwinnable' claims because it actually hopes to *lose* these cases, thereby vindicating its narrative of marginalisation? Such an analysis is, I believe, unsatisfactory. Although they often *anticipate* loss in the courts, and although they view success primarily in terms of pleasing God, Christian legal activists firmly believe in both the moral and legal force of their arguments. That God's economy trumps a judge's ruling does not mean that this ruling is unimportant (see McIvor 2016). Wins are celebrated and losses mourned, not only because they have a real impact on clients whom the staff has come to know and respect but because they represent months of hard work and fervent prayer. As such, it would be misleading to suggest that rights-based cases are taken with loss as their goal.

But although it would be inaccurate to say that the Centre takes its cases with the intention of losing them, there *is* a benefit to these losses, as they allow both staff and supporters to argue that the current approach to rights does not work 'on its own terms'. It is hoped that publicising this through the legal system will achieve three interlocking aims. First, it reveals the intellectual dishonesty of the rights-based system and its lack of foundation or guiding principle. Second, it gives non-Christians a chance to hear a Christian alternative to, for example, universalising understandings of sexuality and gender. Third, it cultivates 'indignation' (Niezen 2010) and encourages other conservative Christians to join efforts to put Christ at the heart of the nation. The potential discomfort a client might feel when they 'cry discrimination' can be justified as part of a broader strategy of opening up possibilities for the articulation of an evangelical alternative. As such, legal activism is part of a two-pronged reform strategy: first, reveal the problems with the current system; second, offer a Christian solution.

Furthermore, the portrayal of conservative Christians as the members of a maligned counterpublic means that the Centre's staff and clients can present their cases as evidence of the law's failure to practice what it preaches even when the Centre's clients *win*, when an alternative reading would suggest that the law had 'balanced' potentially conflicting rights in their favour (cf. Clucas 2012). It is in relation to this phenomenon that we return to the case of Andy and Kathryn, the Abort67 members who had been arrested under the Public Order Act for displaying graphic abortion images.²⁸ Founded in 2008, Abort67 is the brainchild of Andy Stephenson, a small, bespectacled man with

dark, wispy hair and a permanent five o'clock shadow, who formed the group after seeing pictures of aborted fetuses shortly after viewing ultrasound images of his own unborn daughter. Abort67 is the U.K. branch of the Center for Bio-Ethical Reform (CBR), a U.S.-based pro-life campaign group, from which they receive advice, resources, and the graphic pictures used in their demonstrations. Named after the Abortion Act 1967, which provides a defence, under certain conditions, to the crime of procuring a miscarriage under the Offences Against the Person Act 1861, Abort67 presents itself as a public education project that seeks to 'expose' abortion. Andy believes that legislative change depends upon changing public opinion, and it is for this reason that he displays his banner images, some of which are over eight foot in length, outside abortion clinics, colleges, universities, and government buildings.

Anti-abortion sentiment has existed in the U.K. since the passing of the 1967 Act. By the late 1990s, however, the existence of a largely pro-choice electorate meant that ethicist and lawyer Sally Sheldon (1997: 2) could write that 'those who continue to kick against [the status quo] – be they pro- or anti-choice activists – are cast as marginal extremists', with attempts to export the more 'violent' tactics of American organisations such as Operation Rescue deemed 'largely unsuccessful'. By the time of Andy and Kathryn's trial, however, this account was somewhat out of date. Abort67's confrontational approach – the group prioritises 'unborn lives' over 'born feelings' – and explicit link to the California-based CBR had led to its being associated with attempts to (re)politicise the issue of abortion in a way reminiscent of America's abortion 'culture wars' (see Ginsburg 1989), with increasingly polarised rhetoric mobilised by both pro-choice and pro-life advocates as a result (as highlighted by the press: Quinn 2011; Kinchen 2012). Andy and Kathryn's arrests ought to be understood in light of this increasing tension.

Their case was heard in one of Brighton Magistrates' Court's modest courtrooms. Courtroom number two's public gallery consists of two rows of wooden benches upholstered in leather the colour of pea soup, the former occupants of which have scrawled messages in the soft wooden railing separating the gallery from the courtroom proper. Sitting amidst the ghosts of previous spectators – 'Carina + Beth woz ere 03', 'Dawn H. 21.9.91' – I watched the Centre's team use the language of rights to reinforce the conservative counterpublic in a different way than they had done in *Johns*. While *Johns* had suggested that the right to freedom of religion was trumped by the rights of sexual minorities, this case argued that the right to free speech did not seem to apply to Christian groups, with other organisations apparently given free rein to use graphic images in their protests.

The assertion that Christians were treated less favourably than others was made particularly forcefully by Paul Diamond during his cross-examination of one of the arresting Police Constables (PCs), whom I will call PC Thompson. Diamond suggested that PC Thompson had made the decision to remove the banner based not on the criteria of the Public Order Act, which requires the expression under consideration to be insulting, abusive, or threatening, and to have caused harassment, alarm, or distress as a result, but on the basis of her own personal dislike of the image. There's nothing more frightening, he told the judge, than the 'personal predilection' of a police officer arbitrarily

determining the limits of free speech. Having apparently lost none of the rhetorical flair he displayed in *Johns*, he suggested that she had acted as though she were in 'Putin's Russia'. *Were other campaign groups harassed in the way that Abort67 had been?*, he asked. *Were the graphic images used by pro-Palestine campaigners subject to the same level of scrutiny as the graphic images used by Abort67?* Producing an A4 image of the mutilated bodies of deceased Palestinian children, which had apparently been used at an anti-Zionist rally, he placed the photograph into PC Thompson's hands. As she began to cry, the judge called a short recess.

Nor were photographs of these broken bodies the only images submitted as evidence. Abort67 argued that their pictures were no more graphic than many of the images exposed to the general public through newspapers, television, and government campaigns. Indeed, Andy had compiled some of these graphic, bloody, and otherwise disturbing images into a book, a copy of which was given to the judge. The defence went through the images one by one: a front-page newspaper article about the death of Muammar Gaddafi illustrated with a picture of his corpse; a *Time* magazine cover depicting a woman whose nose and ears had been cut off by the Taliban; images of cancerous lungs and diseased hearts taken from government-sponsored anti-smoking campaigns. These counterpublic submissions both challenged the otherwise staid discourse of the court and confirmed Andy's membership in a group that existed, at least partially, outside of this normative order. Citing the graphic images used by evangelicals William Wilberforce and Thomas Clarkson in their campaign against the slave trade, Andy argued that Abort67 was consciously following in the footsteps of a long line of social campaigners who had now lost their subaltern status.

Both Andy and Kathryn were acquitted. Here, then, we see the pragmatic benefit of 'legal theology' (Comaroff 2009), in which secular legal structures are used towards Christian ends. Furthermore, historical comparators help cement the narrative of marginalisation that brings into being the Centre's counterpublic status. While other readings of their victory might suggest that the law, in this case at least, *did* work on its own terms – that although the police had been wrong to arrest Andy and Kathryn, the courts had rectified this injustice by finding them not guilty – the references to eighteenth-century social reformers allied Abort67 with an historic counterpublic, casting them as maligned but righteous crusaders who had been unfairly detained for speaking truth – or Truth – to power. Wilberforce's invocation both highlighted the virtue of Andy and Kathryn's actions and critiqued the inequity of the current legal framework, which had appeared to oppose them. All this in spite of the fact that, in this case at least, their rights had been upheld.

The ethnographic record shows that conservative Christian activists are not the only members of human rights 'cultures' who regard rights discourse with scepticism. Tobias Kelly (2011: 728), for example, claims that '[d]oubt marked the corridors and meeting rooms of [the United Nations building in] Geneva', while Annelise Riles (2006: 55) writes that many of the elite academics, bureaucrats, and human rights activists among whom she carried out research displayed 'a profound and sophisticated scepticism about various aspects of the human rights regime – its theoretical claims, its institutional practices, and its archetypal subjectivities'. And yet, this did not stop them from

“doing” human rights work’ in its various guises: teaching academic courses on rights; serving as expert witnesses; training others in human rights technologies; producing human rights documents (Riles 2006: 56).

What is one to make of this apparent contradiction? In Riles’ analysis, human rights is an area of legal knowledge in which the dominant understanding of the law, particularly among U.S. trained lawyers and activists, is a technocratic, instrumentalist one: ‘The phrase ‘law is a means to an end’ or ‘law is an instrument’ appears hundreds of times in the canonical texts of modern U.S. jurisprudence’ (Riles 2006: 59). Given that they must adopt this instrumentalist approach in their day jobs as lawyers, legal academics, and bureaucrats, her informants’ critiques of human rights ‘true believers’ are ultimately ineffective, as they are made by those whose own daily lives lead them to see such critique as ‘leisurely nonaction, as opposed to professional, up-to-the-minute instrumental action’ (Riles 2006: 55–61). In other words, their ‘critique of legal tools’ was easily transformed into ‘a tool of legal critique’ (Riles 2006: 61).

Riles’ analysis suggests that it is particularly difficult to challenge the human rights project using the tools of elite lawyers, bureaucrats, and scholars: ‘critique and irony’. This article has asked how such a challenge might fare when mounted by a different set of critical lawyers with very different objections to the human rights project. Although their use of rights language might be seen ‘as an instance of unwitting accommodation to the cunning of secular liberal reason’ (Casanova 2006: 27), I suggest that these test cases contribute to a meaningful critique of rights discourse by revealing the inequity of the law as a site for public discourse. *Johns*, for example, upset the norms of privacy and publicity that regulate sexuality and religion in the U.K., revealing that the domestication and privatisation of both faith and sex – characteristics which the bourgeois public sphere might want to see bracketed during the public use of one’s reason (Habermas 2002 [1962]: 36; Calhoun 1992: 13) – works to bolster the exclusionary practices of public space. As with the queer and feminist counterpublics studied by Warner (2002), Fraser (1995), and Felski (1989), which show that patriarchal heteronormativity is perpetuated through the refusal to recognise that the personal is political, cases that pit these ostensibly private rights against each other show them to have an inevitably public component in which some rights claims – and, therefore, the groups who claim those rights – can be portrayed as being ‘more equal than others’ (Williams 2011a).

As noted above, Asad (2003: 138) is undoubtedly correct to highlight the problematic relationship between state norms and human rights, in which ‘an unresolved tension [remains] between the invocation of ‘universal humanity’ and the power of political authorities charged with maintaining the law’. In his analysis, rights become ‘floating signifiers’ to be attached and detached according to the needs of powerful states and capitalist expansion (Asad 2003: 158; cf. Brown, 2004: 457), with devastating effects on the (often non-Western, non-Christian) people to whom state violence is eventually displaced. In the words of José Casanova (2006: 28), this is a ‘stark picture of the secular, liberal democracy, and the human rights regime, all blurred into an undifferentiated totality of Western modernity’. But as Casanova has argued in relation to the Catholic Church’s embrace of universal rights, and as my research supports, rights discourse

does not only serve to legitimise the norms of the state. Rather, cases like *Johns* and *Stephenson/Sloane* show a religious tradition ‘confronting’ the law, challenging it to face its ‘own obscurantist, ideological, and unauthentic claims’ (Casanova 1994: 234). These cases destabilise understandings of modernity in which public law and private morality are, in the context of a plural society, held separate (Casanova 2006: 27). The legal establishment’s rubbishing of *Johns* notwithstanding, that it was heard at all suggests that it is the context-negation of human rights theory, and not – or at least not only – the overwrought language of the Christian Legal Centre that had been revealed as ‘extravagant rhetoric’.

Conclusion

Does it matter that ‘human rights doctrine either is not or cannot be theoretically founded’ (Freeman 1994: 500)? For those who believe human rights to have their origins in the intellectual legacy of Christianity, it just might. Wolterstorff (2008), for example, has argued that secularisation could result in a lessening of the moral force of rights-based theories of justice, as the widespread adoption of a non-theological anthropology might lead to a dereliction of the duties we owe one another as the creations of God. Contra rights critics, Wolterstorff (2008: 389) argues that inherent rights are not individualistic or selfish per se – indeed, he understands rights, as duties owed in relationship, to have an inbuilt sociality – but become so only through their misuse: ‘We twist the culture of rights to our malign impulses.’ Were we to forget their divine sociality, rights might indeed find themselves at risk, with ‘secular advocates of equal rights’ as foolish as ‘children who see beautiful flowers, grab them, break them at their stems, and try to transplant them without their roots’ (Pojman 1991: 496).

For the staff of the Christian Legal Centre, there is some truth in this assessment. If the European Convention’s recognition of human dignity is thought to flow from Europe’s Christian heritage (however loosely defined), then the lessening of the moral force of Christianity might result in the lessening of the moral weight of human rights. However, this narrative is complicated by the way these ‘broken flowers’ are understood to have been replanted in secular soil. In a reworking of Wolterstorff’s suggestion that a societal decrease in belief in the Biblical God might go hand in hand with a general decrease in those who agitate for justice on the basis of inherent rights, Andrea and her team seem to see the human rights project as representing, if not actually *enabling*, Britain’s increasing rejection of what they deem to be Biblical precepts (cf. Duranti 2017).

In this way, the Convention is simultaneously posited as the result of Europe’s somewhat ill-defined Christian heritage – an instrument ‘infused’ with Christian values – and a sign of its departure from Biblical beliefs. The legal system’s embrace of rights shows that Britain has entered a world in which the limited knowledge of the created is prioritised over and above the limitless wisdom of the Creator, where fleeting pleasures are chosen over lasting glory. In Biblical terms, a rights-based legal system shows Britain to have committed the ‘two evils’ of the Old Testament Book of Jeremiah: it has forsaken God, ‘the fountain of living waters, and hewed out cisterns for [itself], broken

cisterns that can hold no water' (Jeremiah 2:13). As such, and whether an individual case is won or lost, counterpublic language always works to supply the Centre with further evidence of the marginal status of conservative Christians in twenty-first century Britain, thus proving that a rights-based society fails to practice the equality it preaches.

Yet as Wendy Brown (2004: 453) has argued of human rights more broadly, '[n]o effective project produces only the consequences it aims to produce'. Ambiguity remains. Warner (2002: 63) suggests that counterpublics are inevitably 'damaged forms of publicness', distorted by virtue of their relationship of subordination to dominant public discourse. The idea of a 'damaged' form of publicity has some purchase here, for the problem with using rights to undermine rights is that, in the end, it is rights talk – and not God talk – that takes centre stage. When Christian activists respond in kind to the rights-based agenda they hope to counter, they might end up reinforcing the structures they wish to contest. Indeed, this critique was often voiced by members of the conservative congregation with whom I carried out fieldwork after my time at the Christian Legal Centre, many of whom – despite sharing the Centre's social and theological conservatism, and despite feeling great personal sympathy for (some of) the claimants – worried that contentious legal activism undermined the relational message at the heart of the Gospel (see McIvor 2016). The Abort67 case, for example, ensured that Andy and Kathryn's right to 'expose' abortion was upheld. But it also risked their being seen to have bought into the individualist, atomistic culture they sought to challenge.

To return to the counterpublics of gender and sexuality mentioned above, one might see in the Christian Legal Centre's use of human rights language the same problems that some feminists and queer theorists have with campaigns that seek to 'normalise' queer lifeways: that by adopting the terminology and structures of already existing institutions, particularly those which are already problematic, the possibility of radically restructuring human relationships is either lost or made 'harder than ever to articulate' (Warner 1999: 93). Although I have argued that Christian activists use rights claims in an effort to undermine the fragmenting impact of a rights-based system, others might see in them the difficulty experienced by Riles' elite critics, who, though seeking to challenge the structures of rights discourse, ultimately reproduce it.

Notes

1. Christian Concern was founded in 2008 by Andrea Minichiello Williams, a barrister, and Pastor Ade Omooaba, an evangelical minister. It is funded by donations from supporters, who come from a range of conservative, primarily Protestant churches. During fieldwork in 2012, the group had approximately 35,000 supporters on its mailing list. This figure has now grown: at the time of writing, Christian Concern's website states that its email bulletins reach 43,000 supporters.
2. *McFarlane v Relate Avon Ltd* [2010].
3. *Chaplin v Royal Devon and Exeter NHS Foundation Trust* [ET/1702886/09].
4. Given 'Brexit', there is some uncertainty regarding the U.K.'s commitment to the European Convention (which many Britons erroneously associate with the EU).

5. Article 9's interiorised definition of religion, which guarantees freedom of belief but offers only qualified protection to its manifestation, makes proving a violation particularly difficult (Peroni 2014; McIvor 2015).
6. In at least one case, an alternative legal strategy was actually pointed out by the presiding judge. See *Core Issues v TfL*.
7. Christian Concern and the Christian Legal Centre are run from the same London office and are largely staffed by the same people. Their primary difference relates to their areas of expertise: while Christian Concern is concerned with political lobbying and consciousness-raising, the Legal Centre litigates cases involving Christians who feel they have been penalised for their faith. Given their overlaps in terms of location, personnel, and interests, I refer to them somewhat interchangeably throughout the article.
8. Fieldwork was carried out between July 2012 and April 2014 at Christian Concern/Christian Legal Centre and a conservative evangelical congregation in the greater London area. The most intensive period of fieldwork with Christian activists was July–December 2012, during which time I carried out an informal internship at Christian Concern's central London office.
9. By contrast to the foundation myth, the understanding of human dignity upon which these conservatives built was disturbingly compatible with ongoing anti-Semitism (Duranti, 2012: 170; Moyn 2015: 77).
10. 'Ex-gay' refers to those who are seeking to 'move away' from what they term 'same-sex attraction'.
11. The Emmanuel Centre is a Christian conference centre in Westminster.
12. This is neither typical nor atypical of a Christian Concern event. At this particular church, most attendees appeared to be sixty-plus and white British (although some Coptic Christians were also present). However, Christian Concern speakers are also invited to church youth groups, black-majority churches, Asian-majority churches, etc. In terms of its denominational, age, class, and ethnic make-up, their support base is extremely broad.
13. It is worth noting that 'intellectual dishonesty' is also the term Wendy Brown (2004: 461) uses in her critique of Michael Ignatieff's minimalist account of rights.
14. The Johns had returned to Jamaica by the time I began my fieldwork.
15. *Johns* at [6–7].
16. At [26–8].
17. At [33].
18. At [33].
19. Emphasis in original.
20. At [32].
21. At [34].
22. At [106].
23. For a fuller account of the contested reception of Christian activism by other Christians, please see McIvor 2016.
24. Emphasis in original.
25. At [33].
26. I am grateful to a reviewer for pointing me towards Weizman's work.
27. A number of claimants in high-profile Christian discrimination cases are migrants and/or members of minority ethnic groups. As with feminist counterpublics (Felski 1989: 168–169), groups that construct themselves as marginal will always include some members who are more marginal than others.
28. Andy had been arrested under the Public Order Act in June 2011 after refusing to remove a particularly graphic banner from an Abort67 demonstration. He was also charged, along with colleague Kathryn Sloane, with obstructing a police officer under section 19 of the Police and Criminal Evidence Act 1984.

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